'UN-REPORTABLE'

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **RFA No.88/2007**

Date of decision: 2nd July, 2007.

MRS.SHIELA DAS & ORS. .....Appellant

! Through: Mr. P.V.Yogeswaran, Advocate

Versus

$ M/S HOTEL REGAL & ANR. .....Respondent.

^ Through: Mr. V.K. Srivastava, Advocate

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CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MS.JUSTICE ARUNA SURESH

(1) Whether reporters of local paper may be allowed to see the judgment?

(2) To be referred to the reporter or not?

(3) Whether the judgment should be reported in the Digest ?

Aruna Suresh, J. (Oral)

1. Appellants herein are aggrieved by the judgment dated 26.10.2006 passed by the Trial Court whereby it decreed the suit of the respondents herein. By the impugned judgment the learned Trial Court decreed the suit of the respondents in the following terms:-

> " In view of my findings on the abovesaid issues, the plaintiff is entitled to the relief claimed with respect to possession of the suit premises and mesne profits. Consequently, the suit of the plaintiff is decreed for possession in respect of the premises bearing No.716, First Floor, Church Mission Compound, Fatehpuri, Delhi, more specifically shown in RED colour in the site plan Ex.PW1/1, annexed with the plaint. The plaintiff is further entitled to mesne profits at the rate of Rs.1000/- p.m. with effect from the date after the expiry of six months from the date of death of Shri T.M.Haridas in the year 1987 to the date of filing of the present suit i.e. 05.02.1993, Rs.2000/- p.m. for the period 06.02.1993 to 05.02.2000 and Rs.3000/- for the period 06.02.2000 till the date of delivery of possession by the defendants to the plaintiff. Costs of the suit is also awarded to the plaintiffs. Decree sheet be drawn accordingly, subject to deposit of residuary court fee by the plaintiffs. File be consigned to Record Room."

2. Late T.M.Haridas was working as Manager with M/s Hotel Regal. He was residing in the flat on 2nd floor of premises No.716, Church Mission Compound, Fatehpuri, Delhi (hereinafter referred to as the 'suit premises') as a licensee of the respondent. In the year 1977 he was made Manager and since then T.M.Haridas shifted from 2nd to 1st floor of the premises. He was in occupation of the premises as licensee of the respondents/ plaintiffs who were a tenant of the abovesaid two flats along with a garrage on the ground floor. T.M.Haridas died in the year 1987. Appellants are the widow and daughters of deceased T.M.Haridas. Since they continued to be in occupation of the premises, respondents

herein filed a suit for possession, declaration and mesne profits. Appellant No.1 claimed herself to be in occupation of the suit premises in her own rights as legal heir of her father Samuel Daniel who according to her was a tenant in the suit premises and she was also born in the same house in the year 1941. The Court disbelieved the defence of the defendants/ appellants and decreed the suit.

3. On the pleadings of the parties, following issues were framed by the Trial Court:-

1. Whether the defendants are in unauthorised and illegal possession of the suit premises since 1987?OPP

2. Whether the defendants are liable to pay damages for use and occupation? If so, at what rate and for what period?

3.Whether the suit is bad for misjoinder of parties?

4. Whether the suit is barred by limitation?

5. Whether the suit is properly valued for purposes of court fees and jurisdiction?

6. Whether the defendants are in possession of the premises as tenants/ licensee? If so, to what effect?OPP

7. Relief.

4. Findings of the Trial Court on issues No.1 and 2 as well as on issue No.6 are challenged in the present appeal.

5. From the evidence as adduced on record and as appreciated by the Trial Court, it is clear that predecessor in interest, Shri R.N. Kukreja, father of respondent No.2 was tenant in the suit premises since the year 1938, though there is no documentary evidence to prove the tenancy since the year 1938 but there are documents which indicate that he was tenant of the suit premises in the year 1958 and thereafter. There is one letter written by Shri R.N. Kukreja, father of respondent No.2 (predecessor in interest) dated 12.9.1958 addressed to Rev. K.G.Sharp Esqr. This letter speaks of some additional accommodation built by Late Mr.Kukreja over the flats in his occupation as a tenant on the 1st floor as well as on the 2nd floor. The flat on the 2nd floor has been described as a smaller flat. The rent was also increased by him for both the flats w.e.f. 1.6.1963. The other letter dated 15.5.1963 Ex.PW-7/2 indicate that Mr.R.N.Kukreja had the permission to sub-let the smaller flat since 1947 whereas the bigger flat was to be kept by him for his residence or for the residence of the Manager of the Hotel Regal.

6. The flat in question i.e. bigger flat on the 1st floor was licensed by him to Shri T.M.Haridas when he was made Manager of the Hotel Regal in the year 1977 and he was made to shift from 2nd floor to 1st floor. Appellant No.1 in her cross-examination admitted that T.M.Haridas her husband was working in Hotel Regal at the time of their marriage at that time was residing on the 2nd floor of the same premises. She also admitted that after the marriage T.M.Haridas shifted on the 1st floor. Respondents also proved in evidence rent receipts for the period ranging from 1972 to 1979 to prove that he has been paying rent to Delhi Diocesan Trust Association; owner of the Church Compound, as a tenant.

7. Appellant produced only one rent receipt dated 8.3.1941 to show that Samuel Daniel, father of appellant No.1 was also residing as a tenant in the St. Stephen's Church Estate, but this rent receipt has not been proved in evidence. Similarly, there are two more rent receipts dated 3.1.1994 and 4.6.1997 wherein the name of the tenant is given as Samuel Daniel. These rent receipts have not been proved in evidence. There are documents like Ex.PW-3/3 which certify that Mrs.Shiela Dass appellant No.1 is bonafide member of the Church Compound residing there since her birth. However, there is no other documents to indicate that

suit premises were in fact in occupation of Samuel Daniel and that after the marriage of appellant No.1 with T.M.Haridas, he (T.M. Haridas) also started living with them.

8. DW-1, Edward Ram Sahai used to visit the Church Compound being Inspector of the Corporation. In the cross-examination he admitted that deceased T.M.Haridas was residing on the first floor and the accommodation in occupation of Samuel Daniel is on the other side, indicating that Samuel Daniel is a tenant in respect of some other premises may be in the same compound, where number of tenants are residing, but he was never in occupation of the disputed flat as a tenant. Even DW-2, Rajinder Singh did state in the cross-examination that he had seen Samuel Daniel residing in other compound.

9. The entire evidence, oral as well as documentary, as placed on record by the parties clearly indicate that there are number of quarters in the premises No.716, Church Mission Compound, Fatehpuri, Delhi which are in occupation of different tenants and none of the flats have their separate number. Even the rent receipts do not indicate the flat number in possession of Samuel Daniel or the respondents. It has also come in evidence that after the marriage of

appellant No.1 with T.M.Haridas, Samuel Daniel had shifted to some other place. From the receipt of the year 1941, which is not proved in evidence, it cannot be said that father of appellant No.1, Samuel Daniel is the actual tenant of the suit premises i.e. flat on the first floor of premises No.716, Church Mission Compound, Fatehpuri, Delhi.

10. Being wife and children of T.M.Haridas, appellants were living in the flat along with him in the suit premises. It was only after the death of T.M.Haridas, a licensee in the premises, that they were asked to vacate the premises which they failed. After considering the entire evidence on record, the learned Trial Court was correct in observing that late T.M.Haridas was a licensee of the respondents and after his death his legal heirs i.e. wife and daughters are in unauthorised possession of the suit premises. The appellants could not prove themselves to be tenant in respect of suit premises. Shri T.M.Haridas was only a licensee, the appellants had therefore no right to claim inheritance of tenancy rights.

11. The suit premises consists of three rooms, one kitchen, toilet and two varrandah. No evidence has been adduced by any of the parties on the quantum of damages/

mesne profits which should be awarded to the respondents against the appellants for unauthorised use and occupation of the suit premises.

12. Considering the accommodation available on the first floor and in the absence of any evidence to the contrary, we do not find any reason to interfere in the assessment of damages which have been awarded by the learned Trial Court in favour of the respondents and against the present appellants. We do not find any reason to interfere in the judgment and decree of the Trial Court. The appeal, therefore, being without any merit is hereby dismissed.

A.K.SIKRI, J.

ARUNA SURESH, J.

July 02, 2007
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